IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.14685 of 1997

Between:

1 D.Nageswara Rao S/o Janardhana Gandhi
R/o Chirala, Prakasam District.
2 Y.Ranganayakulu S/o China Lakshmaiah
R/o Chirala, Prakasam District.
3 Y.Subba Rao S/o Y.Venkateswarlu
R/o Chirala, Prakasam District.

...PETITIONERS

AND

1. State of Andhra Pradesh rep.by its Principal Secretary to Government, Education Department, Secretariat, Saifabad, Hyderabad.

2. The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad.

3. V.R.S. & Y.R.N. College, Chirala, Prakasam District rep.by its Secretary and Correspondent.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Certiorari to call for the records relating to and connected with Memo.No.1460/CEII-1/96-2,dt.30-5-97 as also Memo.No.1460/CEII-1/96-3,dt.30-5-97 issued by the 1st respondent and quash or set aside the same and issue a consequential direction to absorb the petitioners as Lecturers in Geology and Botany as recommended by the Regional Joint Director of Higher Education, Guntur and the 2nd respondent with all consequential benefits including the seniority from the date of their first appointment.

Counsel for the Petitioners: MR.D.V.SITARAMAMURTHY
Counsel for the Respondents: GP FOR HIGHER EDUCATION

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.14685 OF 1997

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ORDER:

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The petitioner Nos.1 to 3 herein, who have been working with the third respondent/Institution as lecturers, filed this Writ Petition, *inter alia*, seeking for a Mandamus challenging the correctness of the two impugned proceedings dated 30.05.1997 passed by the first respondent as bad and illegal, with a further direction to absorb them as lecturers with all the consequential benefits to which they are entitled to under the law as recommended by the Regional Joint Director of Higher Education, Guntur and the second respondent.

Heard Sri D.V.Sitharam Murthy, the learned counsel appearing for the petitioners and the learned Government Pleader for Higher Education appearing for respondent Nos.1 and 2. Though respondent No.3 is served, none appears on its behalf.

The case of the petitioners in brief runs in the lines that the Government had laid down a procedure for recruitment of its staff in the institutions as per the G.O.Ms.No.905 dated 21.09.1976. The petitioner Nos.1 and 2 passed M.Sc., in Geology in first and second divisions respectively. The first petitioner had also passed M.Phil. The third petitioner passed M.Sc., in Botany in first division in the year 1981 from Kanpur University. As per the orders dated 01.08.1985, 02.08.1985 and 10.08.1985, petitioner Nos.1 to 3 herein were appointed by the third respondent respectively and they have been discharging their duties to the utmost satisfaction of the authorities without any complaint. In the meanwhile, the Government had constituted A.P. College Service Commission in the year 1986 and started functioning in the year 1987. Therefore, there has been a renewal of the petitioners' appointment by the third respondent. However, the respondents herein terminated the petitioners from service having regard to the constitution of such Commission and induction of the staff as contemplated there under. Therefore, the petitioners filed Writ Petitions in W.P.Nos.20023 and 20027 of 1987. The petitioners pointed out that in the meanwhile there have been vacancies in various posts in which they could have amply adjust. The aforesaid Writ Petitions filed by the petitioners were allowed by this Court as per the orders dated 04.08.1992, setting aside the orders of termination. Meanwhile, the Government issued proceedings in G.O.RT.No.292 Education (C.E.II-1) Department, dated 22.02.1994. The petitioners went on filing their representations seeking for regular appointment through the process as contemplated under the law and to consider their cases in a more pragmatic and apt manner to regularize their services. However, under the impugned orders, the first

respondent rejected the request of the petitioners for regularization of their services with further directions to continue the petitioners as unaided lecturers and pay the salaries directly from the management funds without any fail.

The main ground urged by the petitioners is that in the meanwhile the respondents have considered the case of petitioner Nos.1 and 3 and their services were regularized as per the proceedings dated 01.12.1998. Now, it is only the case of the second petitioner, which remains to be considered on the same lines as that of petitioner Nos.1 and 3.

That apart, the petitioners also pointed out that in the similar circumstances, two lecturers namely Sri Y.Srinivasa Rao, Lecturer in Physics and Sri T.sambasiva Rao, Lecturer in Economics, who were also appointed and were terminated along with the petitioners, were regularized, reinstated and absorbed in the aided vacancies. The Government had also issued the orders for ratifying the said appointments in G.O.Rt.No.292 dated 22.02.1994. Therefore, there is no reason as to why the second petitioner, who is also similarly placed and qualified, should not be conferred with the said absorption and continuation in service along with other beneficiaries. Any such violation in this regard is quite arbitrary and violation of Articles 14 and 21 of the Constitution of India. It is also pointed out that the second petitioner has been working for more than 19 years with the third respondent and he is fully qualified. Absolutely there is no impediment in considering his case on the same lines as that of the others. Hence, the Writ Petition.

Contesting the petitioners' claim, the respondents submitted that having regard to the fact that the petitioners were not appointed through the Commission

and the procedure contemplated under the law, no such right has been created. Therefore, they cannot seek any relief as sought for. It is submitted that the very appointment of the petitioners to the unaided posts since inception is without observing the rules and procedure. Further, the practice of the management in regard to making such appointment violating the rules was also deprecated and therefore, it was stated that the question of regularization of the petitioners cannot be accepted.

Having heard submissions made by the learned counsel on either side at length and on perusal of the material available on record, the only question which falls for consideration, especially having regard to the fact that the services of petitioner Nos.1 and 3 were already been regularized, is as to whether the second petitioner also requires to be regularized and absorbed in the aided vacancy with the third respondent on par with petitioner Nos.1 and 3 and also other similarly placed persons.

From the aforesaid chequered events, it is evident that no doubt the appointment of all the petitioners was much prior to the constitution of the Commission by the State Government and even the said Commission also has its own teething trouble to make appointments in aided posts of the institutions or regularizing the services of those who were appointed or even to make the regular appointments in a more apt manner. Therefore, having regard to the difficulties faced in regard to the very functioning of the Commission, the Government itself has come out with several relaxing processes allowing the respective managements to give

regular appointments and started regularizing those who were already been appointed, however, subject to the fact that they are qualified. In this case, absolutely there is no plea or any benefit to the fact that any of the petitioners were not qualified by the time of their initial appointment in respect of the posts with the third respondent herein. Further, they have put up such a long service and especially, in view of the fact that petitioner Nos.1 and 3, who were similarly placed along with the second petitioner, were already been regularized with effect from 01.12.1998, there is no reason as to why the second petitioner should not be given similar such benefit. That apart, the Government itself has given relaxation in respect of several such employees as pointed out in the affidavit, the factum of which was not denied by respondent Nos.1 and 2. Even in regard to the regularization of petitioner Nos.1 and 3, there is no denial on the part of respondent Nos.1 and 2. In the circumstances, it is to be held that in view of the long service put in by the second petitioner and in view of the fact that similarly placed employees' services were already been regularized, the service of the second petitioner is also entitled to be regularized and he is entitled to be absorbed in the aided vacancies with the third respondent.

The Writ Petition is allowed to the extent of regularizing and absorbing the second petitioner and dismissed as having become infructuous in respect of petitioner Nos.1 and 3, since they were already been absorbed. No costs.

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(B.PRAKASH RAO, J)

11th July 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Monday, the Eleventh day of July Two thousand and five.

ASSISANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Principal Secretary to Government, State of Andhra Pradesh
   Education Department, Secretariat, Saifabad, Hyderabad.

2. The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad.

3. The Secretary and Correspondent, V.R.S. & Y.R.N. College, Chirala, Prakasam District.

4. Two CCs to GP for Higher Education, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.